

**RULES
OF
DEPARTMENT OF REVENUE
FEES AND EXCISE TAXES DIVISION**

**CHAPTER 560-13-2
STATE HOTEL-MOTEL FEE**

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(1) Purpose. This Rule addresses the state hotel-motel fee imposed pursuant to O.C.G.A. § 48-13-50.3.

(2) Definitions. For purposes of this Rule only:

(a) “Extended stay rental” means providing for value to the public a hotel room for longer than 30 consecutive days to the same customer;

(b) “Hotel” means a building that has 5 or more hotel rooms under common ownership, regardless of the name of the facility and regardless of how the facility classifies itself.

1. Example: A guest rents a cabin at a facility that has 10 free-standing cabins on a single property. Each cabin is offered as a single accommodation, and the guest renting the cabin has access to all the rooms in the cabin. The cabin is not a “hotel” because it does not have 5 or more hotel rooms.

(c) “Hotel room” means a room (or suite of conjoined rooms offered as a single accommodation) (i) in a hotel (ii) that is used to provide private sleeping accommodations

to paying customers and (iii) that typically includes linen or housekeeping service. A hotel room is usually occupied by transients or travelers who do not enjoy an exclusive right or privilege with respect to the room, but instead merely have an agreement for the private use or possession of the room. A room is a hotel room only if the customer has the right to exclude other customers from the room.

1. Example: A facility consists of rooms with beds for rent. A customer renting a bed in a room does not have the right to exclude another customer from renting a bed in the same room. Since the room is not a private sleeping accommodation, it is not a “hotel room.”

2. Example: A camp provides overnight sleeping accommodations in multi-bed, single-room cabins. The guests provide their own bedding. The accommodations provided by the camp are not “hotel rooms” because they are not private and because the camp does not provide linen service.

3. Example: A hotel rents a suite with two bedrooms, two bathrooms, and a kitchen at a nightly rate of \$400. The suite comprises one “hotel room.”

(d) “Innkeeper” means any person who is subject to taxation, under Title 48, Chapter 13, Article 3 of the Official Code of Georgia, for the furnishing for value to the public a hotel room.

(3) Imposition. In addition to taxes of every kind imposed by law, innkeepers must charge a state hotel-motel fee of \$5.00 per night to hotel customers for each calendar night a hotel room is rented or leased unless the rental is excluded under paragraph (7) or until the rental

becomes an “extended stay rental” in accordance with paragraph (8).

(4) Date of imposition. The state hotel-motel fee is imposed on rentals of hotel rooms occurring on or after July 1, 2015 for which payment is tendered on or after July 1, 2015.

(a) Example: On June 15th, a customer reserves and pays for a hotel stay to begin July 2, 2015 and to end at check out on July 13, 2015. The customer does not owe the state hotel-motel fee because she paid for the hotel room rental prior to July 1, 2015.

(b) Example: Assume the same facts as in subparagraph (a), except the customer pays for her stay upon checkout. The customer owes \$55 in state hotel-motel fees.

(c) Example: A customer checks into a hotel on June 1, 2015 and checks out and pays for her stay on July 2, 2015. The customer does not owe the state hotel-motel fee for the 30 nights in June because the fee was not in effect. The customer does not owe the fee for the July 1 rental because the customer became an extended stay occupant on July 1.

(d) Example: Assume the same facts as in subparagraph (c), except the customer pays for the hotel room in May, rather than July. The customer does not owe the fee because she paid prior to July 1, 2015.

(e) Example: A customer checks into a hotel on June 15, 2015 and checks out and pays for his stay on July 20, 2015. The customer owes the state hotel-motel fee for each night from July 1 through July 15. Beginning July 16, the date on which the customer becomes an extended stay occupant, the customer does not owe the fee. The

customer owes state hotel-motel fees in the amount of \$75.

(f) Example: Assume the same facts as subparagraph (e), except the customer pays on June 1, 2015 for his entire stay. The customer does not owe the fee because he paid prior to July 1, 2015.

(5) Liability of innkeepers and third parties. The state hotel-motel fee is a debt from the hotel customer to the innkeeper until it is paid and is recoverable at law in the same manner as authorized for the recovery of other debts. Any innkeeper who neglects, fails, or refuses to collect the state hotel-motel fee as required by this Rule is liable for the fee. Third parties making hotel reservations on behalf of hotel customers must remit all state hotel-motel fees collected by the third parties. If a third party has contracted with an innkeeper to collect taxes and/or fees from hotel customers, the Department may assess and collect state hotel-motel fees from either the innkeeper or the third party.

(6) Sales and use tax base. If the state hotel-motel fee is separately itemized on the bill, it is excluded from the sales price for purposes of calculating sales and use tax.

(a) Example: The price to rent a hotel room for one night is \$100.00. The bill shows \$100 for one night's stay and a separate line-item of \$5.00 for the state hotel-motel fee. The state and local sales tax rate in the county where the hotel is located is 7%. The sales tax is, therefore, \$7.00 (7% of \$100.00).

(7) Exemptions and exclusions.

(a) Except as otherwise provided in this Rule, exemptions under O.C.G.A. §§ 48-8-3 and 48-13-51(h) do not apply to the state hotel-motel fee.

(b) Federal government immunity. The state hotel-motel fee does not apply to hotel rooms rented by the federal government by a check drawn on a federal government account, by a credit card centrally billed to the federal government, or by a federal government purchase order.

(c) Foreign diplomats. Foreign missions, their members, and dependents and Taipei Economic and Cultural Representative Office (TECRO), Taipei Economic and Cultural Offices (TECOs), their employees and dependents are exempt from the fee to the same extent they are exempt from sales and use tax.

(d) Student housing. A facility providing housing to students pursuant to a contract with a school is not subject to the fee, so long as the facility does not provide housekeeping, linen, or other customary hotel services.

(e) Special care facilities. A facility that is registered with or licensed by a Georgia state governmental agency, whether publicly or privately owned and operated, which accepts persons who require special care on account of age, illness, or mental or physical incapacity, and which provides this special care by nurses, orderlies, or aides, is not a hotel. Accordingly, the sleeping accommodations in this type of facility are not subject to the state hotel-motel fee. Examples of these types of facilities are nursing homes, rest homes, convalescent homes, maternity homes, homes for persons with disabilities, residence homes for adults, assisted living facilities, and similar facilities.

(f) Rooms used by the hotel. Rooms used by the hotel in the provision of hotel services, for which no consideration is received, are not subject to the fee. Examples include, but are not limited to, rooms provided to:

1. Quality assurance inspectors;
2. A weekend manager on duty;
3. A food and beverage team assisting with in-house events.

(g) Complimentary accommodations. Complimentary accommodations for which no rent or other consideration is paid are not subject to the fee. The following accommodations are not complimentary and are, therefore, subject to the fee:

1. Accommodations provided to hotel employees at no charge if the accommodations must be included in the employee's wages for purposes of federal income tax;
2. Rooms bartered as payment to vendors such as musicians and photographers;
3. Rooms purchased by redeeming reward points when the hotel receives consideration from a fund or other third party; and
4. Additional nights provided to guests who purchase a specified number of nights.

(i) Example: A hotel advertises, "Buy 4 nights, get the 5th night free." Taking advantage of the deal, a guest purchases 5 nights for \$400. Each night of the guest's 5-night stay is subject to the fee.

(ii) Example: A hotel's rate for a one-night rental of 50 rooms is \$5000. In exchange for a guest's \$5000 payment for a 50-room block, the hotel gives the guest an additional room for one night at no additional charge. Because the guest has rented 51 rooms for one night at the price of \$5000, the fee applies to each of the 51 rooms.

(8) Extended stay rentals.

(a) When a customer rents a hotel room, the innkeeper must collect the state hotel-motel fee regardless of whether the room is rented under a contract that provides that the customer will have the right to occupy the room for longer than 30 consecutive days.

(b) The first 30 days of the rental are subject to the fee and will not be refunded even if the rental becomes an extended stay rental.

(c) Once a rental becomes an extended stay rental (upon the 31st day of continuous occupancy), no further state hotel-motel fee must be collected with respect to the hotel room, provided that the customer's days of consecutive occupancy are not interrupted. This is so, regardless of whether the right to occupy the room is granted under separate, successive contracts.

(d) Changing hotel rooms in the same hotel does not interrupt the period of consecutive occupancy.

1. Example: A hotel customer occupies a particular room in a hotel for 10 consecutive days and, on the 11th day, changes to a different room in the same hotel (second room) and occupies the second room for an additional 30 consecutive days. The rental becomes an extended stay rental on the 21st day that the customer occupies the second room in the same hotel.

(e) An extended stay occupant who transfers from one hotel to a different hotel, whether or not run by the same operator, loses extended stay rental status and must complete the required number of days at the second hotel before the rental becomes an extended stay rental there. Similarly, a change of hotels by a customer who is not yet an extended stay occupant interrupts the number of

consecutive days necessary to establish an extended stay rental.

1. Example: A customer rents a suite of rooms in a hotel. After 20 days, the customer moves to a different hotel owned by the same chain. The customer spends another 20 days at the second hotel. The rental is not an extended stay rental at either hotel because the customer did not occupy a hotel room at least 31 consecutive days at either hotel. The customer may not aggregate the time spent between the two hotels to meet the 31-consecutive-day criteria for extended stay rentals.

(f) For the purpose of determining whether a business entity qualifies as an extended stay occupant of a hotel, days that the business pays rent to the hotel, regardless of whether the hotel room is actually occupied, are considered days that the room is occupied by the business, provided that the employee, customer, client, or other person staying in the room does not reimburse or pay the business for the right to occupy the room. However, days for which an employee, customer, client, or other person pays or reimburses the business for the right to occupy the room or rooms, whether as part of a package or otherwise, are considered days that the room or rooms are occupied by that person and are not considered days of occupancy by the business. The renewal of a rental contract between a business and a hotel, as long as the rental is continuous, does not interrupt the business's occupancy.

1. Example: A company rents three hotel rooms. One room is occupied by an employee of the company, one room is occupied by a client, and the last room remains unoccupied. The employee does not pay for the right to occupy the room; however, the client compensates the

company for use of the room. The days that the room is occupied by the company's employee and the days that the third room remains unoccupied are considered to be days of occupancy for the company with respect to such rooms. Accordingly, after 31 consecutive days of occupancy, the company is considered to be an extended stay occupant of the two rooms. The days that the room is occupied by the company's client, however, are not considered to be days that the room is occupied by the company. Consequently, the company cannot become an extended stay occupant with respect to the room that is occupied by the client.

(g) If an extended stay occupant permits the hotel to rent his or her room(s) to other customers during the occupant's temporary absence, and the occupant does not have the right to occupy any other room or rooms in the hotel during that absence, the occupant's period of consecutive occupancy in that hotel is considered to have ended. Therefore, when the occupant resumes occupancy in the hotel, he or she will not be considered an extended stay occupant of the hotel until a new 31-day period of consecutive occupancy is established. The customer to whom the room or rooms are rented during the former extended stay occupant's absence may establish extended stay status based on whether such customer occupies the room(s) for the requisite number of consecutive days.

(9) Guaranteed no-show revenue. When the agreement between the customer and the hotel provides that the room will not be released or offered to other occupants even if the customer never occupies the room, the innkeeper must collect the state hotel-motel fee for every night for which the customer has reserved and paid for the room, regardless of whether the customer actually stays in the room.

(10) Returns. Innkeepers must report and remit the state hotel-motel fee electronically on a separate return on or before the 20th day of the month following the month of collection. Innkeepers must file a return even for months during which no accommodations were provided. If an innkeeper fails to collect the fee, the innkeeper must report and remit the fee on or before the 20th day of the month following the month of an accommodation for which the fee should have been collected.

(11) Penalties and Interest.

(a) When any innkeeper fails to file a return or to pay the full amount of the state hotel-motel fee due, in addition to other penalties provided by law, a penalty will be added to the fee in the amount of 5 percent or \$5.00, whichever is greater, if the failure is for not more than 30 days. An additional penalty of 5 percent or \$5.00, whichever is greater, will be added for each additional 30 days or fraction of 30 days during which the failure continues. The penalty for any single violation must not exceed 25 percent or \$25.00 in the aggregate, whichever is greater. If the failure is due to reasonable cause shown to the satisfaction of the commissioner in affidavit form attached to the return and remittance is made within ten days of the due date, the return may be accepted exclusive of penalties and interest. In the case of a false or fraudulent return or of a failure to file a return where willful intent exists to defraud the state of the state hotel-motel fee, a penalty of 50 percent of the fee due will be assessed.

(b) The state hotel-motel fee bears interest at the rate of 1 percent per month from the date the fee is due until the date the fee is paid. For purposes of this Rule, any period of less than one month is considered to be one month.

(12) Vendors' compensation. In reporting and paying fees due under O.C.G.A. § 48-13-50.3, each innkeeper is allowed the following deduction, but only if the return was timely filed and the amount due was not delinquent at the time of payment:

(a) A deduction of 3 percent of the first \$3,000.00 of the combined total amount reported due on such return for each location; and

(b) A deduction of one-half of 1 percent of that portion exceeding \$3,000.00 of the combined total amount reported due on such return for each location.

(13) Periods of limitation for assessment of fees.

(a) Except as otherwise provided in this paragraph, in the case where a return is filed, the fee must be assessed within three years after the return was filed. For purposes of this Rule, a return filed before the last filing day prescribed by law will be considered as filed on the last day. If an extension of time for filing a return is granted and the return is filed on or before the extended date, the return will be considered as filed on the extended due date.

(b) In the case of a false or fraudulent return filed with the intent to evade the fee or a failure to file a return, the fee may be assessed at any time.

(c) Where, before the expiration of the time prescribed in this paragraph for the assessment of the fee, both the commissioner and the person subject to assessment have consented in writing to its assessment after such time, the fee may be assessed at any time prior to the expiration of the agreed upon period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the previously agreed upon

period. The commissioner is authorized in any such agreement to extend similarly the period within which a claim for refund may be filed.

(d) If a claim for refund of fees paid for any period is filed within the last six months of the period during which the commissioner may assess the amount of fees, the assessment period is extended for a period of six months beginning on the day the claim for refund is filed.

(e) No action without assessment may be brought for the collection of any fee after the expiration of the period for assessment.

(14) Refunds. The state hotel-motel fee may be refunded in accordance with O.C.G.A. § 48-2-35. Refund claims must be filed with the Department on a properly completed Claim for Refund (Form ST-12). When a hotel customer files a refund claim, the Claim for Refund must be accompanied by a properly completed Waiver of Vendor's Rights (Form ST-12A) or a Purchaser's Claim for Sales Tax Refund Affidavit (Form ST-12B). When the claimant has remitted fee directly to the Department, the ST-12A and ST-12B are not required.

Authority: O.C.G.A. § 48-13-50.3.